UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

AMERIGAS PROPANE, L. P.

and

Cases 9-CA-33776
9-CA-33917

TRUCK DRIVERS, CHAUFFEURS & HELPERS LOCAL UNION #100, AN AFFILIATE OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

Deborah Jacobson, Esq.,
for the General Counsel.
Norman I. White, Esq., (McNees, Wallace and Nurick), of Harrisburg, PA,
for the Respondent.

DECISION

Statement of the Case

ARTHUR J. AMCHAN, Administrative Law Judge. These cases were tried in Cincinnati, Ohio on November 6, 1996.[1] The charge was filed on April 1, in Case 9-CA-33776 and on May 28, in Case 9-CA-33917. The complaint was issued August 15.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Amerigas Propane I make the following

Findings of Fact

I. Jurisdiction

The Respondent, a corporation, sells propane gas at its facility in Monroe, Ohio, where it annually derived gross revenue in excess of $500,000 and purchased and received at its Monroe, Ohio facility goods valued in excess of $50,000 directly from points outside the State of Ohio. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

[1] All dates are in 1996 unless otherwise indicated.

II. Alleged Unfair Labor Practices

A. Overview of the Cases

On March 26, Teamster Local # 100 (the Union) notified Respondent that it was engaged in an organizing campaign at its Monroe, Ohio facility. It also notified Respondent that four of the seven truckdrivers (and therefore bargaining unit employees) at that site were members of the organizing committee: Chadd Carr, James Graham, Wesley Taylor and Ronald Hollon.[2] On April 1, Respondent reduced the hours of all employees at Monroe from 40 hours a week to 32 hours a week.[3] The General Counsel alleges this was done to retaliate against employees for the organizational drive and to discourage employees from selecting the Union as their collective-bargaining representative in violation of Section 8(a)(1) and (3) of the Act.

Amerigas reorganized and transferred the Monroe facility to its region 7 in March. John Sette, who is based in Danville, Illinois, is vice-president and general manager for region 7. His region is divided into 11 markets, which are geographical groupings of facilities (referred to as districts). Monroe is in market 11, headed by Market Manager Ed Ashworth, who is based in Troy, Ohio. Customer Service Manager Richard Queen was in charge at Monroe.

In addition to the District 7 employees, the Monroe facility housed employees assigned to the Clermont County, Ohio "scratch district".[4] While Amerigas purchases most of its facilities from other companies, a scratch district is an operation commenced where no propane gas distribution was previously occurring. Scratch districts are not within the jurisdiction of the Regional Managers. They are the responsibility of Respondent's vice-president for new business development. Respondent did not have a facility in Clermont County. The scratch district was a service area. Customers in the scratch district received propane from trucks driven by employees based in Monroe.

General Manager Sette visited the Monroe district on April 3, 24 and May 2. On some or all of these visits, he was accompanied by Victor Roberts, employee relations manager from Respondent's Valley Forge, Pennsylvania headquarters. On all three occasions Sette met with employees. Market Manager Ashworth also attended one or more of these meetings.

---

[2] There were also two secretaries, as well as other nonbargaining unit personnel at Monroe. The bargaining unit consists of:

> All truck drivers employed at the 880 Todhunter Road, Monroe, Ohio facility, but excluding all office clerical employees, sales employees, mechanics, dispatchers, all other employees and all professional employees, guards and supervisors as defined in the Act.

[3] Prior to April 1, Monroe employees also worked a significant amount of voluntary overtime. This also ceased as of April 1.

[4] Monroe is approximately 15 miles north-northeast of the Cincinnati beltway. Clermont County is east and southeast and immediately adjacent to Hamilton County, in which Cincinnati is located. The longest trips made by Respondent's drivers from Monroe to Clermont took 45 minutes to an hour.

The General Counsel alleges that at the April 24 meeting, Sette threatened to close the scratch district if Monroe employees selected the Union as their collective-bargaining representative. He also alleges that Sette and Roberts, on May 2, threatened employees that if the Union was selected, all bargaining would begin at zero and that the employees could lose everything. The General Counsel alleges that these statements violate Section 8(a)(1) of the Act.

On May 10, the employees at Monroe selected the Union as their collective bargaining representative in a Board-conducted election by a vote of 5 to 2[5]. On May 17, Respondent laid off James Graham. The General Counsel alleges that this was also done to retaliate against employees' union activity and to discourage employees from engaging in such activity in violation of Section 8(a)(1) and (3) of the Act.

Finally, the General Counsel alleges that Respondent violated Section 8(a)(1) and (5) in failing to give the Union advance notice of Graham's layoff and in not affording the Union an opportunity to bargain with respect to this layoff.

B. Credibility Resolutions

1. Sette's alleged threat to close the scratch district

Wesley Taylor, one of the Monroe employees, testified that at the April 24 meeting John Sette said, "[I]f the Union comes in the Clermont District would be history." He also testified that Sette responded negatively at the same meeting to a question from District Manager Ashworth as to whether there would be repercussions if employees voted against the Union. In an affidavit given to the Board on July 5, however, Taylor stated that Sette responded negatively to the question "if there would be any reprisals because of the Union."

Chadd Carr worked at Monroe from January to May 15 and was hired to work for the Clermont County scratch district. He testified that at one of the meetings Sette stated, "if we vote union there's no Clermont." Jim Graham was laid off on May 17 and recalled in September. Graham recalled that John Sette or Vic Roberts said, "[I]f the Union went through the Clermont District would be shut down."

John Sette denies making any such statement. Vic Roberts testified that Sette made no such statement on April 3.[6]

I find that Sette made the statement as alleged. I do this initially because I find Chadd Carr to be credible. Having done so, I also credit the testimony of Graham and Taylor that Sette made the threat attributed to him by all three.

Carr testified that Sette told the workers that all the other union facilities under his jurisdiction were already unionized when he assumed responsibility for them (Tr. 230). In his testimony Sette confirmed that of the 55 to 60 manned facilities that he supervised, 8 are

[5] Those voting included employees assigned to the Monroe district and the Clermont County scratch district. Employees assigned to the scratch district did not work exclusively on scratch district accounts. Although James Graham spent most of his time in Clermont County, Chadd Carr, who was also assigned to the scratch district, rarely went there.

[6] Roberts did not testify about whether Sette made such a statement at any of the other meetings with Monroe employees.

unionized but only 1 (Monroe) became unionized after he took it over. I conclude Carr would not have known this if Sette had not told employees at one of his employee meetings. The fact that I believe Carr's testimony that Sette made this remark leads me to credit his testimony that Sette also threatened to close Clermont.

Sette's remark that Monroe would be the first facility to unionize under his supervision, evidences some degree of animus towards the unionization effort at Monroe. This animus and the fact that three employees testified that Sette threatened to close Clermont persuades me that Sette made such a threat.[7]

I am not persuaded by Sette's testimony that he knew better than to make such a statement. Discussion during these meetings was at times heated. In such an atmosphere, it is not surprising that one would make a statement that one might not otherwise make.

2. Alleged threats by Sette and Roberts that bargaining would begin at zero and that employees could lose everything in bargaining

Wes Taylor testified that on May 2 Employee Relations Manager Vic Roberts responded to a question from employee Mark Perkins regarding negotiations if the Union won the election. Taylor quoted Roberts as telling employees that negotiations would start at ground zero. Jim Graham recalls Roberts responding to Perkins' question by stating that negotiations would start from scratch. Chadd Carr also recalls Roberts responding to Perkins and stating that negotiations would start at ground zero. Ron Hollon testified that Roberts stated something about negotiations starting over.

Roberts denies making a threat "that bargaining would start at zero if employees selected the Union."[8] Given the consistency of the four employees' testimony, I conclude that Roberts said something akin to negotiations start at zero or start at scratch. Both Sette and Roberts also said during their discussions with employees that they had to negotiate in good faith, that everything is negotiable, and at other times refused to comment on employees' wages if the Union won.

3. The events leading to the reduction in the hours of the Monroe employees

Respondent denies that reduction in the hours of Monroe employees from 40 hours a week to 32 hours a week had anything to do with the Union's organizational campaign. Instead, Amerigas contends that these hours were reduced for nonretaliatory economic reasons associated with an unexpected budget shortfall. Towards the end of February Respondent implemented a corporate-wide "Recovery Plan." Earnings before interest, depreciation, and taxes (EBIDT), a significant financial indicator, was one hundred million dollars behind the figures projected for the October 1, 1995 through September 30, 1996 fiscal year.

---

[7] Sette spent several weeks from the end of January to the beginning of March in Chicago during a Teamster's strike against Respondent. At one of the meetings he responded to a question from employee Bill Cross and told the Monroe drivers that Respondent had spent $1.5 million dollars resisting the Chicago strike. I find this evidence irrelevant as to whether Sette bore an animus towards the Teamsters union or unions in general. The remark concerning Monroe being first to organize under his supervision is different. It indicates that Sette viewed the organizational campaign as a personal affront.

[8] Sette testified that he made no such statement. He did not testify regarding whether Roberts made such a statement.

Higher management informed John Sette that he would be expected to recover $450,000 in region 7. This could be accomplished through a combination of cutting expenses and/or increasing receipts. Sette then determined the contribution of each of the 11 markets in his region to the recovery plan. He arrived at these figures by taking a ratio of each market's budgeted earnings (EBIDT) compared to the budgeted earnings of the region and asked for a recovery contribution at the same ratio compared to $450,000.

Sette left it up to each market manager to determine how his or her market would make its contribution to the recovery plan. Region 7's recovery plan submitted on March 14 met the $450,000 objective. It did not contemplate reducing the hours of employees at the Monroe district.

In a telephone conversation on or about March 10, Respondent's Financial Vice President Paul Grady apprised Sette of a loss of $2 to $3 million in February. He asked Sette if he could come up with an $300,000 to $400,000 increase in EBIDT beyond that called for in the recovery plan. Region 7 was able to achieve an additional $488,727 increase in EBIDT, $159,961 of which was contributed by market 11.

The earliest evidence regarding a reduction in hours in market 11 is a March 22 transmission from Market Manager Ashworth to four of his district managers and/or custom service managers. That transmission was entitled "1996 Recovery Plan---April through September." Ashworth instructed his subordinates to "Utilize a 32 hour work week. Begin April 1 or sooner." (G.C. Exh. 44 at 4). Page 11 of that transmission reflects no contemplated layoffs or reduced workweeks at Monroe. It does reflect reducing the hours of 5 of 8 employees at Lima, Ohio, from 40 hours a week to 38. Similarly, the hours of 4 employees at Ft. Recovery, Ohio are reduced to 34 hours a week. Of 8 full-time employees at Market headquarters in Troy, 2 have their hours reduced and 2 are scheduled for 3-month layoffs. At the remaining sites at Swanton (just west of Toledo), Fremont, and Napoleon, Ohio, 3 employees are scheduled for layoff, while 13 others are to remain at 40-hour weeks.

On March 25, General Manager Sette had a conference telephone call with members of his staff. This call is memorialized in Respondent's Exhibit 1, which indicates:

> John S asked if anyone had any questions. Ed [presumably Ashworth] asked about vacation time. If his employees work 32 hour work weeks, when they take a vacation will they be entitled to 40 hours? John S said that he thought HR looked at days instead of weeks. Kelley will check into this and get back to Ed with the correct answer from HR.

On March 26, Richard Queen, the customer service manager at Monroe sent a memo to Ed Ashworth entitled "Recovery Plan Responses". In that memo he states, "32 hour work weeks will begin next week. I will start with one employee per week, continue thru September." (G.C. Exh. 43). There is no evidence as to whether it was Ashworth, Queen, or someone else who made the decision to reduce the workweeks of all employees at Monroe to 32 hours and no evidence establishing when this decision was made. On April 9, the Union amended a previously filed unfair labor practice charge to allege that this reduction in hours was also an unfair labor practice. At the end of May the hours of employees remaining at Monroe were restored to 40 hours a week.[9] Just prior to that Sette received a call from Ashworth stating that

[9] Chadd Carr resigned on May 15. James Graham and Shelly Cassidy, a secretary, both of Continued

there were not enough hours in the day to accomplish the work his employees had to perform. Sette authorized a return to a 40-hour week.

4. The layoff of James Graham

After his initial visit to Monroe on April 3, General Manager John Sette recommended to William Russell, the vice president for new business development, and Paul Grady, Respondent's financial vice president, that the Clermont County scratch district be closed. The scratch district is within Russell's area of responsibility rather than Sette's. It had been in operation only 8 to 9 months and was started to acquire commercial and industrial accounts on the eastern side of Cincinnati.

Sette also told Roberts that he was going to recommend that the Clermont scratch district be closed. Roberts called Respondent's labor counsel the next week. This attorney advised the company not to close Clermont before the NLRB election because then the decision would be viewed as an attempt to influence the election and might be an unfair labor practice. There is no evidence as to who made the decision to close the scratch district, why they did so, or when they did so.[10]

On May 15, five days after the Union won its election, Respondent closed the Clermont County scratch district and laid off driver James Graham and a secretary, Shelly Cassidy. Chadd Carr, who was also assigned to Clermont, resigned the day before. Cecil Styons, a sales representative hired for the scratch district during the pay period ending April 26, was transferred to a new scratch district in Dry Ridge, Kentucky. Styons became the business manager of the Dry Ridge scratch district, which is located about 30 to 35 miles south of Cincinnati, adjacent to Interstate 75. A truckdriver may also have been hired for the Dry Ridge scratch district. James Cable, the other employee of the scratch district, apparently was transferred to the Monroe district.

5. The alleged refusal to bargain over the layoff of James Graham

On May 15, at 5:08 p.m., Employee Relations Manager Vic Roberts notified union organizer Junior Mann, in a two paragraph fax, that it was permanently laying off James Graham effective May 17. It invited Mann to contact Roberts if he had any questions. Roberts received no response to his fax. On July 29, at his first negotiating session with the Union, Roberts offered to negotiate with respect to Graham's lay off. Mann told Roberts that he would have to talk with his attorney and that he would get back to him. Neither Mann or anyone else from the Union has ever done so.

III. ANALYSIS

1. General Manager Sette's threat to close the Clermont scratch district violated Section 8(a)(1). Victor Roberts' statement that negotiations would start at zero or from scratch did not violate Section 8(a)(1).

It is axiomatic from my finding that John Sette threatened to close the Clermont scratch district that Respondent violated Section 8(a)(1) of the Act. Such a statement obviously

---

whom were assigned to the scratch district, were laid off on May 16 or 17.

[10] Sette and Roberts testified that they were told by employees that the scratch district had 47 to 49 accounts in April. There is no evidence that it was closed for that reason.

interferes with employees' Section 7 rights. However, the legality of Victor Roberts' statement regarding negotiations if the Union won is not that clear.

A statement that bargaining will begin "from scratch" or "from ground zero" does not necessarily violate Section 8(a)(1). The Board has drawn a distinction between two types of situations. The first violates the Act. This occurs when the statement, in context, could be understood by employees as a threat of loss of existing benefits and leaves employees with the impression that what they may ultimately receive depends on what the union can induce the employer to restore. However, when other statements make it clear that any reduction in wages or benefits will occur only as a result of the normal give and take of negotiations, such remarks do not violate the Act. *Taylor-Dunn Mfg. Co.,* 252 NLRB 799, 800 (1980), *Bi-Lo,* 303 NLRB 749, 750, 756-757 (1991).

In determining into which category Roberts' statement falls, I first take into consideration that it was made in response to a question that used the term "ground zero" or "from scratch." This fact tends to make the statement less coercive than if the employer initiated the subject. Moreover, it is clear that Sette and Roberts also promised in the course of discussions with employees to bargain in good faith. Thus, at worst employees received a mixed message as to how Respondent would conduct its negotiations if the Union prevailed.

Some of the Board's decisions finding such statements violative do so because they occurred in conjunction with other unfair labor practices. *Shaw's Supermarkets, Inc. v. NLRB,* 884 F.2d 34, 40 (1st Cir. 1989). The issue is thus whether Roberts' statement is violative because it was made after the Monroe employees' hours had been suspiciously reduced and after they had been threatened with closure of the Clermont scratch district. The commission of other unfair labor practices does not automatically make Roberts' remark an unfair labor practice. *See, Bi-Lo,* above. Given the fact that this statement was made once, not initiated by Respondent, and that Sette and Roberts also promised to negotiate in good faith, I conclude that the statement did not violate Section 8(a)(1). It is closer to that described as nonviolative in *Taylor-Dunn,* above, than one which leaves employees believing that negotiations will result in the loss of existing benefits.

2. The reduction in the hours of Monroe employees to 32 hours a week violated Section 8(a)(1) and (3).

The hours of the Monroe employees were reduced 5 days after Respondent learned of the Union's organizational campaign. Additionally, John Sette's threat to close the Clermont scratch district if employees selected the Union, convinces me that Respondent bore animus towards the campaign. The General Counsel has thus satisfied his burden of persuasion that antiunion animus was a substantial or motivating factor in the decision to reduce the hours of the Monroe employees. Respondent falls far short of demonstrating that this reduction of hours would have occurred in the absence of the organizing drive. Therefore, I conclude that the hours were reduced in violation of Section 8(a)(1) and (3). *Manno Electric, Inc.,* 321 NLRB No. 43, slip op. 3, fn. 12 (1996); *Wright Line,* 251 NLRB 1083 (1980).

I conclude that Respondent's stated reasons for the reduction are pretextual. First, it is clear that the Monroe employees' hours were not reduced as part of the region 7 recovery plan. Financial vice president Grady's February 29 memo regarding the recovery plan suggests utilizing a 32-hour workweek for at least two people in each district as a "potential action item" (G.C. Exh 5 at 3). However, the memo made it clear that final recovery plan actions were to be determined by the regional vice president/general manager. Sette's recovery plan submitted on March 14 did not contemplate any cutback in employee hours at Monroe.

After submission of the recovery plan John Sette was asked to provide an additional $300,000 to $400,000 increase in EBIDT, and in fact achieved $488,727 more. Market 11, which includes Monroe, contributed $159,961 of this increase. However, nothing in this record establishes that the reduction in hours at Monroe was necessary to achieve this goal or that it was motivated by a desire to achieve this end.

Indeed, Respondent did not establish when it decided to reduce the hours of all Monroe employees to 32 hours a week or for what reasons. Respondent did not call either Edward Ashworth, the market manager, or Richard Queen, the custom service manager, to testify. One or the other apparently decided to make this across-the-board reduction as Sette left the details of recovery to his subordinates. Respondent's failure to call Ashworth and/or Queen as witnesses is a further indication that Respondent made this decision for discriminatory reasons.

The documentary evidence on which Respondent relies, if anything, suggests a discriminatory motive. On March 22, Ashworth sent a transmission to four district managers suggesting utilization of a 32-hour workweek. However, page 11 of that transmission indicates that he was not proposing such a reduction for all employees in all four districts. Indeed, while no reductions in hours were contemplated for Monroe employees on March 22, only Monroe employees suffered an across-the-board reduction to 32 hours, while other employees in market 11 continued to work a 40-hour week.

On March 25, Ashworth asked Sette about the implications for vacation time if his employees worked 32-hour weeks. Nothing in the minutes of that discussion indicates that Ashworth was asking this question in relation to Monroe employees, as opposed to some other or all other employees in his market. This memorandum does not indicate that a decision had been made to reduce all Monroe employees to a 32-hour week.

Moreover, on March 26, when he may already have been aware of the union organizational drive, Monroe's customer service manager Queen, told Ashworth that he intended to start having one employee each week work 32 hours. This memorandum indicates that the decision to reduce all Monroe employees to a 32-hour week was made after March 26, after Respondent knew of the organizational campaign.

Additionally, as the General Counsel's brief points out, the record does not indicate that economic reasons justified imposition of a 32-hour workweek at Monroe, and not at other districts in market 11. Attached to Paul Grady's February 29 memo was a ranking of districts within region 7 by earnings (EBIDT) per gallon for the fiscal year ending September 30, 1995, and the next fiscal year up to January 30. Earnings per gallon is generally considered to be a reliable indicator by Respondent and the ranking of districts was provided to assist regional

vice presidents/general managers in deciding whether to close marginal districts (G.C. Exh. 5 at 3).[11]

For the fiscal year ending September 30, 1995, Monroe ranked fourth best in the entire region, out of over 100 facilities. For the first 4 months of the next fiscal year Monroe ranked 15th.[12] The other market 11 districts were ranked considerable lower. In 1995 Napoleon was 25th, Troy 31st, Lima 34th and Ft. Recovery 40th. Toledo and Fremont, Ohio, which were also part of region 7 prior to October 1, 1996, were ranked in the bottom 25 districts. Up to January 30, 1996, Napoleon was 30th, Troy 40th, Lima 41th, and Ft. Recovery 45th. Fremont and Toledo were again ranked near the end of the list.

Within 2 months of implementing the 32-hour weeks, Market Manager Ashworth told Sette that there were not enough hours in the day to do the work in that district and asked him to restore the Monroe employees to 40 hours. In the absence of contradictory evidence this suggests that the reduction in hours never made any sense from an economic standpoint.[13]

4. The layoff of James Graham violated Section 8(a)(1) and (3).

Five days after the Monroe employees voted for the Union, Respondent closed the scratch district and laid off James Graham, the most junior employee and a member of the organizing committee. Given the timing of the events and the fact Sette threatened to close the scratch district if the Union won, I conclude that the General Counsel has met his burden of persuasion that the layoff was retaliatory.

I conclude further that Respondent has not established that it was motivated by the poor performance of the Clermont scratch district in laying off Graham. *Wright Line,* above. As the General Counsel's brief points out, there is no evidence regarding Respondent's expectations with regard to Clermont or any point of comparison with other scratch districts. Assuming that Clermont only had 47 to 49 customers by April, one would have to know, for example, how long it generally takes a scratch district to be profitable before one could judge whether there was a valid economic reason to close it.[14]

John Sette recommended to the vice president of new business development that Clermont be closed. However, there is no evidence in this record as to who made the decision to close it, when the decision was made, and what factors were considered. In the absence of such evidence I draw the inference of retaliatory motive from the timing of the decision and the evidence of animus. In this regard the hiring in mid-April of Cecil Styons as a sales

---

[11] Although Sette testified that earnings per gallon may be a misleading indicator in some instances, there is no indication that it was misleading with regard to the performance of the Monroe district.

[12] Clermont ranked last on both lists. The significance of this will be discussed below.

[13] I specifically discredit Sette's testimony that people were bumping into each other at Monroe (Tr. 130). Respondent's payroll records (G.C. Exh. 26) indicate employees at Monroe were working a considerable amount of voluntary overtime prior to April 1. In the absence of any evidence to support such a inference, I cannot conclude that Respondent would pay employees overtime pay when they did not have enough to do.

[14] For this reason I do not regard the fact that Clermont ranked last in earnings per gallon in region 7 to be an indication that it was failing economically.

representative for Clermont suggests that the decision to close Clermont was made afterwards.

Assuming that Respondent had a nondiscriminatory reason to close the scratch district, it did not necessarily have a nondiscriminatory reason to lay off Graham. First of all, the record does not indicate that Amerigas stopped serving Clermont County. Even if it did, within 2 weeks of Graham's discharge the hours of the remaining employees at Monroe had to be restored to 40 per week because there were not enough hours in the day to do the work required of them. This suggests that there may have been enough work for Graham as well. Although Graham spent 65 to 70% of his time working in Clermont County, Chadd Carr, a scratch district employee who resigned on May 15, worked primarily on Monroe district business.

5. Respondent violated Section 8(a)(5) by failing and refusing to bargain with the Union over James Graham's layoff.

At the close of the business day on May 15, Respondent informed the Union that it was laying off James Graham, effective May 17. (R. Exh. 3). Graham's layoff was a mandatory subject of collective bargaining. *E. R. Industries,* 320 NLRB 935, 937 (1996). However, the Union did not request that Respondent bargain over the layoff.[15]

The issue with regard to the 8(a)(5) allegation is whether the Union's failure to request bargaining is a waiver of its bargaining rights. The General Counsel argues that the May 15 fax was presentation of a fait accompli. Thus a bargaining request would have been an exercise in futility. *Ciba-Geigy Pharmaceuticals Division,* 264 NLRB 1013, 1016-1018 (1982). I conclude that given the timing of the notice to the Union, effectively 1 business day before the layoff, Respondent had no intention of bargaining about whether Graham should be laid off. The Union merely recognized this to be the case in not requesting bargaining. Thus, I find a violation of Section 8(a)(1) and (5).

Conclusions of Law

1. By threatening to close the Clermont scratch district if employees voted for the Union, Respondent has interfered with, restrained, and coerced employees in the exercise of their Section 7 rights and has therefore violated Section 8(a)(1) of the Act.

2. By reducing the hours of its Monroe, Ohio employees to 32 hours a week beginning April 1, Respondent violated Section 8(a)(1) and (3).

3. By laying off James Graham on May 17, Respondent violated Section 8(a)(1) and (3).

4. By unilaterally laying off James Graham without providing the Union an opportunity to bargain over this layoff, Respondent violated Section 8(a)(1) and (5).

[15] Although the Union was not certified until May 20, Respondent was required to bargain with it on May 15. *See Mike O'Connor Chevrolet-Buick-GMC,* 209 NLRB 701 (1974).

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily reduced the hours of James Cable, Chadd Carr, William Cross, James Graham, Ron Hollon, Mark Perkins, and Wesley Taylor, must make them whole for any loss of earnings and other benefits, computed on a quarterly basis, less any net interim earnings, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent having discriminatorily laid off James Graham and then recalled him, must within 14 days[16] restore his seniority as if he had not been laid off, make him whole for any loss of earnings and other benefits, computed on a quarterly basis, less any net interim earnings, as prescribed in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded, above*.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[17]

ORDER

The Respondent, Amerigas Propane, L. P., Monroe, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Laying off, reducing the hours or otherwise discriminating against any employee for supporting Truck Drivers, Chauffeurs & Helpers Local Union #100 or any other union.

(b) Threatening to close any facility if employees support the Union.

(c) Taking unilateral action on mandatory subjects of bargaining.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Provide sufficient notice to the Union of any decision affecting the terms and conditions of employment for employees, and on request by the Union, bargain concerning

---

[16] See *Indian Hills Care Center*, 321 NLRB No. 23 (May 8, 1996), where the Board set for the specific time deadlines for Respondent to comply with the specific remedial provisions of its orders.

[17] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

these decisions.

(b) Within 14 days from the date of this Order, restore the seniority and other benefits of James Graham as if he had not been laid off on May 15.

(c) Make James Graham, Chadd Carr, Ron Hollon, Wesley Taylor, Mark Perkins, William Cross and James Cable whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Monroe, Ohio facility copies of the attached notice marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 1, 1996.

(f) Within 14 days after service by the Region, mail a copy of the attached notice marked "Appendix" to all truckdrivers who were employed by the Respondent at its Monroe, Ohio facility at any time from the onset of the unfair labor practices found in this case until the completion of these employees' work at that jobsite. The notice shall be mailed to the last known address of each of the employees after being signed by the Respondent's authorized representative.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[18] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., February 12, 1997.

_____
Arthur J. Amchan
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT lay off, reduce the hours or otherwise discriminate against any of you for supporting Truck Drivers, Chauffeurs & Helpers, Local Union #100 or any other union.

WE WILL NOT threaten to close any facility if you support the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL NOT take unilateral action on mandatory subjects of bargaining.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All truck drivers employed at the 880 Todhunter Road, Monroe, Ohio facility, but excluding all office clerical employees, sales employees, mechanics, dispatchers, all other employees and all professional employees, guards and supervisors as defined in the Act.

WE WILL, within 14 days from the date of the Board's Order, restore to James Graham his seniority or any other rights or privileges previously enjoyed--as if he had not been laid off on May 15, 1996.

WE WILL make James Graham, Wesley Taylor, Ron Hollon, James Cable, Chadd Carr, Mark Perkins and William Cross whole for any loss of earnings and other benefits resulting from their reduction in hours worked and in case of James Graham, his layoff, less any net interim earnings, plus interest.

_____
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 550 Main Street, Room 3003, Cincinnati, Ohio 45202–3271, Telephone 513–684–3663.